this, if there was fault at all, it was his own fault. But if we say there was no fault on his part, as certainly there was none on Snyder's, and that they stand equally innocent, it was treating the plaintiff with the utmost fairness to submit these circumstances to the jury, and leaving them to decide which party should bear the loss. This is what the Court did. The plaintiff has no reason to complain of it.

That a party who insists on such a stipulation in a bill of lading should be at hand, or should appoint some one to receive the freight at the proper time and place for its payment, is not, we think, an unreasonable rule of law. It does not clash in the least with the authorities cited, and it is recommended by that sound rule of diligence in business which is good for every body. The Court gave this rule to the jury in connection with evidence which made its application necessary and proper.

The judgment is affirmed.

In the Court of Common Pleas—General Term.

GEORGE W. WILLIAMS *vs.* ALEXANDER H. HOLLAND, TREASURER OF THE AMERICAN EXPRESS COMPANY.

Where a common carrier of merchandize received from a consignor a box, and received therefor a bill of lading in which the name of the consignee alone appeared, and the box, upon tender to the consignee, was refused, and was subsequently stored by the carrier with a regular warehouseman, from whom it was stolen: *Held*, that this did not constitute negligence on the part of the carrier, and that he was not liable for the loss.

H. A. Griswold, for Appellant.

H. C. Van Vorst, for Respondent.

The opinion of the court was delivered by

DALY, F. J.—The defendants, who were common carriers, carried a box to the place of its destination, and tendered it to the consignee, who refused to receive it. It was then safely stored by the defendants, in the premises in which they were accustomed to store merchandise, in the care of good and responsible parties; and while thus upon storage, the premises were broken into by robbers, and the box and its contents feloniously taken.

The consignee having refused to receive the box, the defendants discharged their contract, as carriers, by placing it upon storage, and the warehouseman became thereafter the bailee and agent of the plaintiff in respect to it. *Fisk* vs. *Newton*, 1 Denio, 45; *Ostrander* vs. *Brown*, 15 Johns. 39; *Cairns* vs. *Robbins*, 8 Mees. & Welsb. 258. As the property was taken feloniously, the warehouseman was not answerable for the loss. *Schmidt* vs. *Blood*, 9 Wend. 268. But, it is claimed that the defendants are liable because they did not notify the plaintiff, within a reasonable time, of the refusal of the consignee, and that they had stored the box with a warehouseman. But it did not appear, from anything in the case, that the defendants knew who was the owner; and, unless they did, they could not be expected to notify him of what they had done; or if they did know, it may have been, for all that appears in the case, that he was duly notified. The name of the owner was not inserted in the printed receipt given by the defendants. The space in which the consignor's name is usually inserted, was left blank, and the address of the consignee, or person to whom the box was to be delivered, was the only thing contained in the receipt to indicate to whom the property belonged. Under such circumstances, there could be no presumption that the defendants knew that the box belonged to the plaintiff, and that they failed to notify him.

It rested with the plaintiff to make out a case of negligence; and all that was necessary to show it, it was incumbent upon him to prove. He was himself examined as a witness, and if he had communicated his name and address to the defendants, when the bag was left with them for transportation, he could have proved it. He did not do so, and if any conclusion is to be drawn, it is that the defendants had no knowledge of the owner until after the bag was feloniously taken from the warehouse. As the contents of the box were "a kit of articles or implements for gambling," there may have been very good reasons for concealing the name of the person in the State to whom it belonged. 2 Rev. Stat., 927, §25, 5th ed. It is sufficient, in conclusion, to say, that the onus of showing that the box was lost by the defendants' negligence, was upon the plaintiff, and that he failed to show anything of the kind.

The judgment should be affirmed.